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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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JERRY ANOLIK,  
  
Plaintiff and Appellant,  
  
v.  
  
WILLIAM DEATSCH et al.,  
  
Defendants and Respondents.

C060331  
  
(Super. Ct. No.  
34200700883841CUWEGDS)

Defendant William Deatsch rented commercial property to plaintiff Jerry Anolik, who operated an automobile body repair business. Deatsch filed an unlawful detainer action against Anolik. Anolik answered with a general denial and asserted retaliatory eviction as an affirmative defense. Prior to trial the parties entered into a stipulation and order. Subsequently, Anolik filed an action for damage to property and business losses against Deatsch, but did not include a claim for retaliatory eviction. The court denied Anolik's later request to amend his complaint.

Anolik then filed a cross-complaint for retaliatory eviction in the formerly settled unlawful detainer action; the

trial court granted Deatsch's motion to strike the cross-complaint. Anolik filed a separate action for retaliatory or wrongful eviction, and the trial court sustained Deatsch's demurrer without leave to amend. Anolik appeals, contending this last complaint is not barred by any prior judgment or the statute of limitations. We shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Anolik rented commercial space from Deatsch in 2003 under a month-to-month lease. Anolik operated an automobile body repair business. After Deatsch hired a company to perform maintenance on the building in August 2005, including pressure washing the roof, Anolik claimed the repair work damaged his personal property and informed Deatsch of his plans to sue.

In November 2005 Deatsch filed an action for unlawful detainer, based on a 30-day notice served on October 3, 2005 (Sacramento Superior Court case No. 05UD08288). Anolik failed to vacate the premises prior to expiration of the notice. Anolik answered the complaint with a general denial and alleged the affirmative defense of retaliatory eviction.

Prior to trial, in December 2005, the parties entered into a stipulation and order under which Anolik agreed to voluntarily vacate the premises in six months and permitted Deatsch to obtain a writ of possession without a judgment. However, the writ would be stayed through May 31, 2006. Anolik's rent would not increase and would be paid monthly. The stipulation also contained a right of early termination by Anolik on 30 days' written notice. Anolik could not request a stay of execution

beyond the termination date. Finally, Anolik waived his right to trial on the merits and waived attorney fees and costs.

Approximately two weeks later, Anolik filed a complaint for damage to property and business losses caused by the pressure washing (Sacramento Superior Court case No. 05AS05685). The complaint did not state a claim for retaliatory eviction.

Prior to the expiration of Anolik's tenancy under the terms of the stipulation, Anolik's counsel requested an extension. Deatsch denied the request.

Anolik moved for leave to file an amended complaint alleging retaliatory eviction in case No. 05AS05685. The trial court denied Anolik's motion, finding the retaliatory eviction claim was the same claim litigated in the unlawful detainer action, wherein Anolik set forth in his answer a claim of retaliatory eviction as a defense. The court reasoned: "Since plaintiff in the settlement agreement reached in the unlawful detainer action agreed to voluntarily surrender the premises no later than May 31, 2006, and did not preserve further claims for 'retaliatory or wrongful' eviction, he cannot now revive those claims simply by amending his complaint in this action. There has been an accord and satisfaction of the wrongful eviction claim."<sup>1</sup>

Anolik then filed a cross-complaint in the previously settled unlawful detainer action (case No. 05UD08288). Deatsch

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<sup>1</sup> Anolik later dismissed case No. 05AS05685 without prejudice.

filed a motion to strike and abate the unlawful detainer cross-complaint, which the trial court granted. Anolik appealed to the appellate division of the superior court, which affirmed the trial court's decision.

Anolik filed a third civil action based on the same facts and alleging retaliatory eviction in December 2007 (Sacramento Superior Court case No. 34200700883841CUWEGDS). The trial court sustained Deatsch's demurrer without leave to amend and stated: "This Court concludes, based on the above history, that the issue of whether a cause of action to recover damages for retaliatory eviction survived the settlement of the unlawful detainer action has previously been litigated by plaintiff, and that three different courts have determined that it did not. . . . [¶] . . . [T]his Court is not the first court to consider the issue; it has been considered by three courts previously." The court concluded it could not reconsider the rulings of the previous courts, which had determined the settlement agreement barred Anolik's claim for retaliatory eviction.

Following entry of judgment, Anolik filed a timely notice of appeal.

## **DISCUSSION**

### **I**

An appeal from a judgment entered after the sustaining of a demurrer without leave to amend presents anew the question whether it appears that the plaintiff is entitled to any relief against the defendant. This presents a pure question of law.

We construe the allegations of the complaint liberally with a view to substantial justice between the parties. We consider whether the complaint might state a cause of action if a defect could reasonably be cured by amendment, and reverse the judgment of dismissal if the defect can be cured. The plaintiff bears the burden of demonstrating the defect can be cured by amendment. (*Schnall v. Hertz Corp.* (2000) 78 Cal.App.4th 1144, 1152.)

## II

Anolik argues his complaint for retaliatory eviction is not barred by res judicata.

The doctrine of res judicata precludes parties from relitigating an issue that has finally been determined by a court. Three elements must be met: (1) Was the issue decided in the prior adjudication identical with the one presented in the action in question? (2) Was there a final judgment on the merits? (3) Was the party against whom the plea is asserted a party to the prior adjudication? (*Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221, 1226.)

According to Anolik, the settlement stipulation filed in the unlawful detainer action brought by Deatsch had no res judicata effect. Anolik contends the filing of a dismissal without prejudice is not res judicata on a claim and is not a bar to the filing of a new action on the same claim provided the statute of limitations has not run. Anolik also argues the filing of a dismissal without prejudice does not have the legal effect of a final judgment.

However, a judgment following a settlement bars future actions to the same extent as a judgment entered into after a full trial. (*Johnson v. American Airlines, Inc.* (1984) 157 Cal.App.3d 427, 431; *Eichman v. Fotomat Corp.* (1983) 147 Cal.App.3d 1170, 1177.) Nonetheless, Deatsch claims that under the reasoning of *Pelletier v. Alameda Yacht Harbor* (1986) 188 Cal.App.3d 1551 (*Pelletier*) and *Landeros v. Pankey* (1995) 39 Cal.App.4th 1167 (*Landeros*), a stipulated judgment addressing possession is not a bar to a subsequent action for damages based on a claim of retaliatory eviction.

In *Pelletier*, a yacht harbor tenant sued the harbor for negligence that led to the sinking of his boat, and for retaliatory eviction from the yacht berth. The harbor asserted collateral estoppel as to the retaliatory eviction claim, arguing the tenant had raised the defense in a prior unlawful detainer action. The prior action was resolved by a stipulated judgment that made no mention of a relinquishment by the tenant of claims arising from the retaliatory eviction. The appellate court rejected the collateral estoppel argument, finding the retaliation defense was not fully and fairly litigated in an adversary hearing and was not conclusively established. (*Pelletier, supra*, 188 Cal.App.3d at p. 1557.)

In *Landeros*, the plaintiff tenants brought an action against their former landlords for breach of warranty of habitability. The landlords had previously brought an unlawful detainer action against the tenants, which resulted in a stipulated judgment with the tenants vacating the premises.

The trial court sustained the landlords' demurrer on collateral estoppel grounds, because the warranty of habitability was raised by the tenants as an affirmative defense in their answer to the unlawful detainer action. (*Landeros, supra*, 39 Cal.App.4th 1167, 1169-1171.)

The appellate court reversed, finding the former judgment, arrived at by stipulation with no issues actually litigated, did not preclude the tenants' action because the stipulated judgment contained no express language showing the parties intended to preclude the tenants from litigating damages resulting from their tenancy. The court also noted there was no comprehensive settlement language or any release of all claims arising from the tenants' occupation of the premises. (*Landeros, supra*, 39 Cal.App.4th at p. 1172.)

In sustaining Deatsch's demurrer, the trial court evaluated *Landeros* and found that while the issue in *Landeros* was "similar to the issue presented to this Court, i.e., whether the unlawful detainer settlement bars a claim for retaliatory eviction, the procedural posture of this case is significantly different. In *Landeros*, the issue was first presented to the trial court, and then to the appellate court in a direct attack on the trial court's ruling. Here, this Court is not the first court to consider the issue; it has been considered by three courts previously. This Court cannot now reconsider the rulings of the courts that previously considered the issue and decided that the settlement reached in the unlawful detainer action bars any further claim by plaintiff for retaliatory eviction."

We agree with the trial court's assessment. In *Landeros* and *Pelletier* the claims the plaintiffs sought to assert had not been previously litigated in the stipulated judgments. Here, the issue of retaliatory eviction had been previously litigated. Following the trial court's denial of his motion to amend the complaint in case No. 05AS05685, Anolik filed a cross-complaint in the previously settled unlawful detainer action, alleging retaliatory eviction. (Case No. 05UD08288.) The trial court granted Deatsch's motion to strike and abate the unlawful detainer cross-complaint. Anolik appealed, and the appellate division affirmed the trial court's decision.

The issue decided in the previous litigation is identical to the issue presented in the current appeal. The previous litigation resulted in a final judgment on the merits between Anolik and Deatsch. The requirements for res judicata have been met, and the trial court did not err in dismissing Anolik's complaint.

#### **DISPOSITION**

The judgment is affirmed. Deatsch shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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RAYE, J.

We concur:

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SCOTLAND, P. J.

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NICHOLSON, J.